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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,289	10/22/2001	Michael Roy Coke II	014208.1434	5060
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BAKER BOTTS L.L.P. 2001 ROSS AVENUE, 6TH FLOOR DALLAS, TX 75201			LEVINE, ADAM L	
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			3625	

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/010,289	<b>Applicant(s)</b> COKE ET AL.	
	<b>Examiner</b> Adam Levine	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| ✓ 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)           | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)     | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicants have filed amendments and remarks dated September 7, 2005, in response to the office action dated June 7, 2005. Independent claims 1-3, 8-11, 16-18, 23-26, and 31, and dependent claims 6, 14, 21, and 29 are amended. Applicants' remarks indicate that claim 27 has been amended and that claim 29 has not been amended. This is not in agreement with Applicants' listing of claims. The listing of claims shows that claim 27 is not amended and claim 29 is amended. Claims 1-41 are pending and all pending claims are examined in this final office action.

#### **Pertaining to the objection to the drawings in the previous office action:**

The amended version of Figure 4 is accepted and overcomes the previous objection. The objection to Figure 4 is therefore withdrawn.

### ***Response to Arguments***

#### **Pertaining to the rejection of claims 31-41 under 35 USC 101 in the previous office action:**

The amendments to claim 31 are acceptable to overcome the rejection in the previous office action. The rejection of claims 31-41 under 35 USC 101 is therefore withdrawn.

*Pertaining to the rejections under 35 USC 102(b) and 103(a) in the previous office action:*

Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection. Examiner notes per applicants' remarks that Geller (Paper #052705; US Patent No. 5,844,554) is more clearly directed to methods and systems for designing and creating user interfaces intended for the same uses as the interfaces in the present application. The present claims have been amended to specify that the software components downloaded from the server are related to features chosen by the customer, and downloaded in response to the customer choosing those features. They are therefore now clearly directed to the use rather than creation of such an interface. The new ground(s) of rejection have been chosen because they are more clearly directed to the same function. Applicant should note, however, that Geller is still relevant prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

***Specification***

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

Claim 8 is objected to because of the following informalities: the Examiner believes that “software feature” in line 9 actually refers to the “software component” introduced in line 7. Appropriate correction is required.

Claim 15 is objected to because of the following informalities: “determined” should be “determine.” Appropriate correction is required.

Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**1. Claims 1-4,6-12,14-19,21-27, 29-32, 34-39, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Kagami (US Pat. No. 5,974,400).**

Kagami teaches all the limitations of Claims 1-4,6-12,14-19,21-27, and 29-32.

For example, Kagami discloses downloading from a server an interface for communication with said server (see at least abstract, Figs. 5,7,8; column 2 lines 12-37). Kagami further discloses:

- allowing a customer to choose one or more features from a predetermined set of features relating to the product: (see at least Fig.8, column 8 lines 40-48).
- downloading, in response to the customer choosing one or more features, from the server one or more software components relating to each chosen feature: gathered data are used to obtain initial user specific design (see at least Fig.1,3,4,8, abstract, column 2 lines 20-28, column 4 lines 42-51. Please note: The transmission request for data controlled by the server is the selection of features. The data controlled by the server is the software component related to the feature.)
- allowing the customer to modify at least one of said chosen features of the product by use of the related software component: modify at least one attribute of one or more chosen features, wherein said attribute(s) relate to shape, three-dimensional location and appearance (see at least Figs.6-8, column 5 line 61 – column 6 line 15, column 8 lines 40-48).
- presenting to the customer for viewing a simulation of the product incorporating said at least one feature modification: data representing consumer preference

are integrated in product design process, data are used to alter the design based on consumer preference, data representing consumer preference are used by designer for end-stream customer-specific modifications, data used to perform real-time modifications in marketing and manufacturing process (see at least Fig.8, column 5 line 61 – column 6 line 15, column 9 lines 26-31); wherein said simulation is available to the server for evaluation (see at least Figs.1,4; column 2 lines 26-30, 38-47, column 5 lines 9-13, column 9 lines 46-63, column 11 lines 42-45); making available to a product designer said data for evaluation in real time, data are used for mid-stream modifications of in-progress product design (see at least Figs.1,3,4,9; column 2 lines 26-30, 38-47, column 5 lines 9-13, column 9 lines 46-63, column 11 lines 42-45. Please note: either the expert or the user or both could be a product designer. The identity of the party the data is made available to is not functionally involved in the recited steps of the method. Because it has no functional role in the method it will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381 , 1385, 217 USPQ 401, 404 (Fed. Cir. 1983). MPEP 2106).

- recording feature modification on the server: (see at least Fig.4,10; column 7 lines 22-36, 54-58; column 4 lines 49-62).
- collecting pre-determined user data from the user: recording said user data on the server (see at least column 1 lines 28-32, column 5 lines 41-44, column 8 lines 56-59. Please note: in any system that interacts with the user and provides results to the user, the user must be identifiable and the users actions must be

relatable to the user so that the results can be associated with and presented to the user. Otherwise the system would be unworkable. Therefore collection of certain user data is inherent. This is not to be confused with the data pertaining to the physical dimensions of the user's body which the prior art protects from distribution in raw form, although it still does record the results of the modeling process (i.e., the feature modifications) to the server).

- relating said recorded at least one feature modification to said recorded user data for evaluation: associating said recorded at least one feature modification to said recorded user data for evaluation (see at least column 2 lines 38-47, column 5 lines 9-17, column 9 lines 28-43, column 11 lines 42-45. Please note: in any system that interacts with the user and provides results to the user, the users actions must be relatable to the user so that the results can be associated with and presented to the user. Otherwise the system would be unworkable. Therefore relating the recorded modification to the user data is inherent. This is not to be confused with the data pertaining to the physical dimensions of the user's body which the prior art protects from distribution in raw form, although it still does record the results of the modeling process (i.e., the feature modifications) to the server).
- requesting from a server an interface for communication with said server: (see at least Figs. 1-3,5,7-10; column 2 lines 12-37); requesting from said server one or more features from a predetermined set of features relating to the product (see at



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least abstract, Fig. 1,3,4,8, column 2 lines 20-28, column 4 lines 42-51, column 8 lines 40-48).

- a connection to a data communications link, operationally coupled with said server, configured to transmit requests: (see at least Figs. 1-4,9,10).
- at least one computer memory connected to server: (see at least Figs. 1,2,4,10; column 4 lines 14-16).
- a computer processor: (see at least Figs. 1,3,4,9; column 6 lines 52-56, column 7 lines 3-6. Please note: the processing steps are inherently performed by a processor); a communication link between a server and a user connected to the processor (see at least Figs. 1,3,4,9); computer memory operationally coupled with processor (see at least Figs. 1,3,4,9).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claims 5, 13, 20, 28, 33, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kagami (US Pat. No. 5,844,554) in view of Abelow (Paper # 052705; US Pat. No. 5,999,908).**

Kagami teaches all of the above as noted under the 102(b) rejection and teaches  
a) gathering personal data from users, b) gathering data regarding user preferences, c)

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allowing users to design their own product, and d) allowing experts to evaluate results and users to evaluate results based on expert advice. Kagami however does not explicitly disclose user data relating to the user's demographics. Abelow teaches user data relating to the user's demographics (see at least column 37 lines 23-25 and 36-40, column 92 lines 37-39, claim 21). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the systems and methods of Kagami to include user data related to user's demographics in order to help product vendors correlate demographics with user preferences in the development and design of products, making them more responsive to customers' desires, resulting in more sales.

Kagami teaches all of the above as noted under the 102(b) rejection and teaches a) allowing consumers to access a product model, b) allowing consumers to modify at least one feature to express design preferences, c) gathering data for determining customer preferences, and d) gathering data based on pre-determined parameters. Kagami however does not disclose statistically organizing gathered data based on pre-determined parameters to discern customer preference. Abelow teaches statistically organizing gathered data based on pre-determined parameters to discern customer preference (see at least abstract, Figs. 13,14,20,27B,29B; column 2 lines 6-12, column 4 lines 31-45, column 17 line 61- column 18 line 10. Please note: statistically organizing gathered data based on parameters to determine customer preferences is the same as gathering demographic data, i.e., personal data becomes demographic data upon being statistically organized). Therefore, it would have been obvious to one of ordinary skill in

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the art at the time of the invention to modify the systems and methods of Kagami to include statistically organizing gathered data based on pre-determined parameters to discern customer preference in order to help product vendors develop and design products that are more responsive to customers' desires thereby resulting in more sales.

Kagami teaches all of the above as noted under the 102(b) rejection and teaches a) gathering data for determining consumer preferences, b) integrating data regarding consumer preferences in a product design, c) product useable by plurality of consumers, and d) incorporating modification of at least one feature in a product design. Kagami however does not disclose use of said data by a manufacturer to replace current design with design whose features incorporate data relative to modifications of at least one feature collected from a plurality of customers. Abelow teaches use of said data by a manufacturer to replace current design with design whose features incorporate data relative to modifications of at least one feature collected from a plurality of customers (see at least abstract, Figs. 1,13,34B; column 2 lines 6-36, column 19 lines 20-39). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and systems of Kagami to include use of said data by a manufacturer to replace current design with design whose features incorporate data relative to modifications of at least one feature collected from a plurality of customers as taught by Abelow in order to manage business better, select priorities more responsively, budget resources more accurately, target points where products and services matter most to customers, and increase the company's revenues and profits.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Levine whose telephone number is 571.272.8122. The examiner can normally be reached on M-F, 9:30-6:00 Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 571.272.7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Adam Levine  
Patent Examiner  
January 19, 2006



WYNN W. COGGINS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600